IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1574 OF 2001 (M/S)
Old CMWP No. 19566 of 1998

1. State of U.P. through Competent Authority
   Urban Land Ceiling Dehradun.

… **Petitioner.**

Versus

1. Sri Vijay Kumar son of Sri Hari Prasad,
   R/O Village Brahmanwala, District Dehradun
2. The District Judge, Dehradun.

… **Respondents.**

Dated 02-03-2006

Hon'ble B.S. Verma, J.

By means of the present Writ Petition, the petitioners-State has challenged the judgment and order dated 30-5-1996 passed by the District Judge, Dehradun (respondent no. 2) in Urban Land Ceiling Appeal No. 70 of 1996, Vijay Kumar vs. State. By the impugned judgment and order (***Annexure- 1 to the writ petition),*** respondent no.2 allowed the appeal setting aside the order dated 19-4-1990 of the Competent Authority.

Brief facts giving rise to the present writ petition are that initially in pursuance of the provisions of Section 6(1) of the Urban Land (Ceiling and Regulation) Act ***(in short the Act),*** the original land holder Hari Prasad, father of the petitioner, filed the statement of properties held by him and proceedings were drawn. The proceedings were dropped on the ground that the land in possession of the land holder was agricultural land on 17-2-1983 by the competent authority on the basis of the report submitted by Naib Tahsildar. He also held that the Master Plan was not in force in Dehradun. Subsequently, after enforcement of the Master Plan, proceedings were again initiated and notices were issued to

landholder and after necessary inquiry and survey, land to the extent of 6011.08 sq.mt. was proposed to be declared surplus excess land under the provisions of Section 8(3) of the Act. Notices were issued to the land-holder and draft statement was issued under Section 8(3) of the Act proposing aforesaid land to be declared as surplus vacant land and the proceedings were initiated. The land-holder filed objection through his lawyer. The learned Competent Authority after perusing the material on record came to the conclusion that the landholder was possessed of surplus vacant land and passed the impugned judgment and order dated 13-12-1988 declaring 6011.08 sq.mt. land as excess vacant land in possession of the landholder. Aggrieved by the said order, land holder (contesting respondent no. 1) preferred appeal before the District Judge mainly on the ground that the land in question was agricultural land. The learned District Judge after hearing both the parties passed the impugned judgment and order dated 30-05-1996 as mentioned above. Aggrieved by the impugned order, the State has come up before this Court in the Writ Petition.

I have heard learned Standing Counsel for the State and perused the record.

The Act Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) was repealed by the Central Act No. 15 of 1999. The Legislature of State of U.P. has since adopted the provisions of the Urban Land (Ceiling and Regulation) Act 1999, by a resolution as required by Article 252(2) of the Constitution, which has come into force in Uttar Pradesh on 18-03-1999 and the same are also applicable in the State of Uttaranchal.

Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 provides as under:

> ***"4. Abatement of legal proceedings.- All proceedings relation to any order made or purported to be made under the principal Act pending***

immediately before the commencement of this Act, before any Court, Tribunal or other authority shall abate;

Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority."

As stated by the learned Standing Counsel, Sri Nand Prsad, appearing on behalf of the State, no declaration has been published under Section 10(3) of the principal Act, therefore, no question of vesting of the land in the State or taking over possession arises. The effect of the repealing Act on present case is that where for land in dispute, no declaration was published under Section 10(3) of the Act, there is no question of vesting the land in the State or taking over possession of it. The present proceedings have to be abated and are hereby abated under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

The facts of the case are squarely covered by the judgment of the Apex Court in the case of ***"Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and others" (2000, AIR, SCW, 1882).***

In view of the above, the Writ Petition has become infructuous and is dismissed as infructuous. Ordered accordingly.

(B.S. Verma, J.)

RCP